IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 890 of 1982

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AGRO MARINE PRODUCTS LTD.

Versus

DAHYABHAI JIVANLAL TANDEL

Appearance:

1. First Appeal No. 890 of 1982

MR MI PATEL for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 12/04/2004

ORAL JUDGEMENT

1. The appellant filed Summary Suit No. 4342 of 1979 in the City Civil Court, Ahmedabad, against the

respondent on 21-12-1979. The appellant's case was that the defendant had purchased fishing trawler for Rs.1,40,000-00 on 9-5-1976. Rs.85,000-00 were advanced by Gujarat State Financial Corporation as a loan to the defendant towards sale consideration and Rs.10,000-00 were paid in cash by the defendant and Rs.25,000-00 were paid by the Fisheries Department of the Government. Rs.20,000-00 remained payable towards sale consideration. The said amount was treated as a loan to the defendant and the defendant executed a written agreement on 9-5-1976 under which the said amount of Rs.20,000-00 was to be repaid with interest at the rate of 12.5 % per annum in 18 monthly instalments, each of Rs.1,111-00. The first instalment was to be paid on 30-7-1976. However, the defendant did not pay a single instalment. The appellant therefore filed the said suit to recover the amount of loan with interest.

2. It appears that the plaint was placed before the learned Chamber Judge, who passed the following order on 19-11-1981.

" Plaintiff's advocate is not present.
Defendant is made liable for the suit claim under the agreement dated 9th May, 1976. No payment is made by the defendant thereafter. Suit is filed on 21st December, 1979. No averments as to how the period of limitation is saved, is made in plaint. Hence the claim is apparently time barred.

The defendant has not appeared. The suit is dismissed with no order as to costs.

Dt: 19.11.81. "

The appellant has, therefore, filed this appeal challenging the said order dismissing the suit.

3. The order is presumably passed under Order VII Rule-11(d) of the Civil Procedure Code, which provides that the plaint shall be rejected, where the suit appears from the statement in the plaint to be barred by any law.

4. Now it is clear from the averments made in the plaint that, according to the appellant, the defendant executed an agreement on 9-5-1976 under which he agreed to repay the amount of loan with interest in 18 monthly instalments. The entire amount was not to be paid at once. The instalments were to be paid as and when they became due. Hence it is not possible to say that

recovery of all the instalments was barred by limitation. It will be a matter of evidence as to what amount was beyond time. The learned Judge therefore was in error in dismissing the suit under O.7 R. 11 (d) on the ground that it was beyond the period of limitation.

5. The appeal is, therefore, allowed. The impugned order is set aside. The suit is ordered to be restored to file and it shall proceed further in accordance with law. No order as to costs.

Dt: 12-4-2004 (M.C. Patel, J)

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